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Collective negotiation in education has lagged behind collective bargaining developments in private industry, which have resulted from the passage of a number of federal statutes, beginning with the NIRA Act of 1933. By contrast, state statutes for collective negotiation in education have been relatively few, recent, and inadequate. Topics considered include composition of the bargaining unit, compulsory membership, and binding arbitration. Five premises support the NEA position of professional negotiation. Eight premises support the AFT position of collective bargaining. (JK)

TEACHERS, ADMINISTRATORS, AND COLLECTIVE BARGAINING

Edward B. Shils and
C. Taylor Whittier

TEACHERS
ADMINISTRATORS
AND
COLLECTIVE BARGAINING

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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TEACHERS ADMINISTRATORS AND COLLECTIVE BARGAINING

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Preface

In the 1965 Philadelphia School District negotiations with the American Federation of Teachers, one of the authors was Superintendent of Schools while the other served as Chief Negotiator. At the end of seven hundred hours of bargaining, which culminated in the first agreement wherein Philadelphia's schoolteachers were to be represented collectively, the writers agreed to collaborate on a book that would cover the subject of collective bargaining in the schools.

Teachers, Administrators, and Collective Bargaining, the result of that collaboration, has taken approximately two years to prepare, and during the research and writing periods, the writers found that other parts of the country were devising guidelines to fill the gaps in how to go about negotiating a first contract. In the early Philadelphia negotiations, both the administration's representatives and the teachers' bargaining team had to "feel their way along" in order to develop a new institution. The demand by teachers for participation in wage discussions, work-rule formulation, and policy development had no foundation in either Pennsylvania law or school-district enactments. There was a need to formalize teacher–administration relationships, but there was great fear that the board might be bargaining away certain nondelegatable powers. Because each of the parties took a constructive posture, a new institution evolved in Philadelphia which has worked fairly well thus far.

During the two-year period in which this book has been written, other city school districts benefited by the experience of New York City and Philadelphia. Thirteen states—Alaska, California, Connecticut, Florida, Massachusetts, Michigan, Minnesota, New Hampshire, New York, Oregon, Rhode Island, Washington, and Wisconsin—have passed laws, most of them since 1965, which now provide guidelines to collective bargaining for teaching personnel in school districts.

The decision to write the book was made with a sincere desire to share our experiences with other superintendents and negotiators. These experiences perhaps constituted the first partnership between a superintendent versed in educational administration and a labor-relations teacher and practitioner. The writers enjoyed the experience of negotiating and writing together and believe that it is one way in which "Town and Gown" can get together for the mutual benefit of the community.

The writing partner with the industrial bargaining background also had been employed as a personnel consultant by the Philadelphia Board of Education and other school districts since 1946. One of his first assignments after World War II was the development of a single salary schedule for Philadelphia's teachers, and years later, a salary and classification plan for all nonteaching personnel in the Philadelphia schools. These experiences provided him with a valuable background for understanding problems of school administration discussed at the bargaining table. Since completing his negotiation chores in the first AFT contract, he has represented New Castle County and the Mount Pleasant and Wilmington School Districts in Delaware in negotiations with the American Federation of State, County and Municipal Employees, AFL-CIO. The employees involved were in the custodial and maintenance classifications.

On September 1, 1967, the educational administrator part of the team resigned as the Philadelphia Superintendent of Schools to take on an unusually challenging assignment as Executive Director, Central Atlantic Regional Educational Laboratory, in Washington, D.C. In this new assignment, it will be possible for him to serve the states of Virginia, West Virginia, Delaware, and Maryland, as well as the District of Columbia, in providing information on those aspects of the appropriate utilization of professional manpower which stem from research and experience at the negotiating table.

It is apparent that interest in collective negotiations is on the upsurge: the recent increase in teacher militancy has dramatized the need for further education and training in this area. To that end, a number of excellent conferences sponsored by various institutions—Harvard University, the University of Chicago, Rhode Island College, and the University of Pennsylvania—have already been held, and many more are now being undertaken throughout the country. It is the hope of the authors that *Teachers, Administrators, and Collective Bargaining* will be of great value to all those interested in preparing formally for collective negotiations. The success of principals and teachers in "living with the agreement" will depend on a mutual understanding and appreciation of the bargaining process.

The preparation of this manuscript was facilitated by the knowledge and assistance of several individuals. Dr. Herbert R. Northrup, Professor of Industry and Chairman of the Industry Department at the University of Pennsylvania, made available his extensive files in public education as well as other materials relating to his own early research in employee representation activities in several professional fields. Dr. George W. Taylor, Harnwell Professor of Industry at the University of Pennsylvania, helped clarify many knotty issues on important differences between public and private bargaining with respect to the requirements of public welfare. Dr. Taylor's most recent contribution to public bargaining was the 1967 enactment New York State's Taylor Law, stemming from his committee's 1966 researches to assist Governor Rockefeller in developing a comprehensive legislative program to replace the Condon-Wadlin Act. Mr. Walter Duglin provided statistical research assistance and Mr. David T. Rosenberg, Assistant Director of Staff Relations at the Philadelphia Board of Education, assisted in the procurement of important resource materials. Mrs. Dalia Vilgosas and Miss Susanne Iannece, loyal secretaries, deciphered the hurried scrawls on the worksheets and created a readable manuscript. Mrs. Shirley R. Shilo and Mrs. Sara Jane Whittier deserve much for their consideration and kindness in overlooking the many absences and inattentions of the authors during the past two years.

R.R.S.

C.T.W.

October, 1967
Philadelphia, Pa.

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Chapter 5

COLLECTIVE BARGAINING IN PRIVATE INDUSTRY IN THE UNITED STATES COMPARED TO THE PRESENT STATUS OF COLLECTIVE NEGOTIATIONS IN PUBLIC EDUCATION

Collective negotiations consist of a series of new ideas concerning the rights of school employees to bargain collectively with school boards in the same fashion that unions in the private sector have bargained collectively with industrial employers since the nineteenth century. The authors use the words "collective negotiations" to include not only teachers and other professionally certified personnel in schools—but also non-teaching educational employees such as school secretaries, bus drivers, accountants, plumbers, painters, and others.

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Professional Negotiations

The NEA prefers the term "professional negotiation" and uses it in this sense:

> A set of procedures written and officially adopted by the local staff organization and the school board, which provides an orderly method for the school board and staff organization to negotiate on matters of mutual concern, to reach agreement on these matters, and to establish educational channels for mediation and appeal in the event of an impasse.[1]

[1] T. M. Stinnett, J. H. Kleinmann, and Martha L. Ware, *Professional Negotiation in Public Education* (New York: Macmillan, 1966), p. 6.

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NEA, working through its district chapters and its state affiliates, seeks exclusive recognition for its chapters. This is to be spelled out in a written agreement officially signed and accepted by boards of education. These written agreements should contain the following items: [2]

1. Recognition of the right to organize. (Professional employees shall have the right to form and join employee organizations.)
2. Recognition of the local organization. (When it becomes certified as representing a majority in the bargaining unit.)
3. Designation of the specifics of how the organization shall qualify to be the exclusive negotiating representative (by membership lists or secret ballot, in which an organization representing the majority becomes the "exclusive representative").
4. A formal method through which negotiations will automatically be opened between teachers and the board of education. (Written notice and meetings to be held 15 days after receipt of such notice.)
5. Provisions for written proposals to be submitted or exchanged between the parties (no less than five days before scheduled meeting dates).
6. The requirement that the parties reach an agreement and the signing of a formal written agreement upon completion of the negotiations.
7. Procedures to be followed in the event of impasse in negotiations (mediation panel and ultimately an "advisory officer").
8. The use of an appeal procedure to resolve impasses where necessary (seven-man Education Advisory Board, State Board of Education and Legislature).

Professional Negotiation versus Collective Bargaining

While the National Education Association recommends the process known as "professional negotiation," the American Federation of Teachers presses "collective bargaining." The differences between the two approaches are more in semantics than in fact. What are the basic similarities?

1. Both approaches have provisions for a direct, one-to-one relationship between the teachers and the board of education.

[2] *Professional Negotiation with School Boards*, Research Report 1963-R3 (Washington, D.C.: Research Division, National Education Association, March 1963), pp. 12 and 13.

2. Both organizations want state laws to establish this relationship.
3. Both want written contracts implementing the relationship.
4. NEA employs "sanctions" and AFT the "strike" in the event of an ultimate decision which is unsatisfactory to the teachers.
5. Both have limited agreement on the use of third parties.[3]

Both the NEA and the AFT are pressing feverishly for the passage of state laws to further "professional negotiation" or "collective bargaining" respectively. The principal differences in the proposed legislation appears to be in the use of departments of education in NEA-sponsored legislation as compared to state labor departments to administer the rules and regulations pertaining to bargaining and elections. NEA would pin further responsibilities on a state school code rather than a state labor code. AFT actually is close to the AFL-CIO state labor organizations and pushes its proposed laws with the aid of the state organizations.

The distinction between sanctions and strikes is a matter of semantics. Actually, NEA chapters in various cities such as Newark, New Jersey, have employed the strike. The climate where the troubles take place makes the NEA chapter behave like an AFT local.

Generally, the NEA chapters include principals and supervisors and AFT locals do not. However, more and more, the NEA contracts in big-city school systems include classroom teachers only.

The AFT views the superintendent as the chief executive officer of the school system and negotiates against him. The NEA philosophy is that the superintendent is the "middleman" offering advice and counsel to both the NEA and the board as they negotiate.

With respect to impasse, the NEA generally prefers to use the mediation services of state departments of education, while the AFT finds state departments of labor more acceptable.

With respect to arbitration as the last step of the grievance procedure, the NEA is more willing to accept recommendatory or advisory arbitration, while the AFT insists on binding arbitration. Several recent NEA-negotiated agreements, however, do contain binding arbitration clauses, among them the New Haven, Connecticut, contract negotiated at the close of 1965.

Even the distinction between recommendatory and binding arbitration is not too important, if the advisory arbitration award is made pub-

[3] *Teachers Negotiate with School Boards*, U.S. Dept. of Health, Education, and Welfare, U.S. Office of Education (Washington, D.C.: U.S. Government Printing Office, 1964), p. 55.

lic and the arbitrator is a person of great knowledge and distinction. These circumstances would make an advisory award very difficult to overrule. In the New Rochelle, New York, agreement with the NEA chapter, if the parties cannot select "an experienced impartial and disinterested person of recognized competence in the field of public education," the arbitrator is then to be selected by the President of Teachers' College, Columbia University.

The Influence of Federal Statutes upon School Collective Negotiations

Chaos exists in school bargaining because in a majority of the states guidelines and permissive statutes do not exist. The situation is similar to that in private industry in the United States before 1935, when the New Deal ushered in massive legislation such as the National Industrial Recovery Act (NIRA) and the National Labor Relations Act (Wagner Act).

National Industrial Recovery Act of 1933

With improvement of labor standards as one of its many objectives, the National Industrial Recovery Act (NIRA) went far. In the famous Section 7 (a), it specified that all codes of fair competition adopted by the various industries should (*a*) set minimum wage levels, fix maximum hours, eliminate child labor, and otherwise improve working conditions; (*b*) recognize the right of employees to "organize and bargain collectively through representatives of their own choosing," and (*c*) protect the right of every employee and person seeking employment against being required as a condition of employment "to join any company union or to refrain from joining." The government not only appeared concerned about a need to restore purchasing power in the hands of the destitute, but unequivocally endorsed labor unions as mechanisms through which employees might collectively compel employers to live up to adequate wage and hour standards, and otherwise maintain reasonably good working conditions. With workers unionized, collective bargaining became the keystone of the national labor policy as an alternative to the imposition of terms by employers or workers alone.

In 1935 the United States Supreme Court jeopardized the gains of labor with a decision outlawing the NIRA.[4] Promptly in the same year,

[4] Shechter Corporation v. United States, 295 U.S. 495 (1935).

however, Congress, in response to urgent labor demand, invoked the commerce power of the Constitution and passed the National Labor Relations Act, known as the Wagner Act, salvaging practically the whole of Section 7 (a) with its basic guarantee of collective bargaining.

The National Labor Relations Act of 1935 (Wagner Act)

The Wagner Act made bargaining in good faith more free and more effective. It outlawed "company" unions, and all unions henceforth were to become fully independent employee organizations.

Employers were forbidden to discriminate between union and nonunion workers. The act clearly indicated that its intention was not to interfere with the use of the strike as a form of bargaining power. It made universal, for the first time, the basic rights of workers to organize and bargain collectively with employers. In fact, the encouragement of bargaining was the act's central aim and purpose. The legislation was prized by labor as marking its greatest gain up to that time.

To enforce the measure, a National Labor Relations Board to be appointed by the President was assigned two important functions: first, to ascertain and declare who in any particular plant are bona fide representatives entitled to speak for employees in collective bargaining; and, second, to hear and pass on complaints against employers for denying or abridging employees' rights to organize, for refusing to bargain collectively, for discharging employees for union activity, or for engaging in other "unfair" labor practices.

The act permitted employees to file a petition for an election to achieve recognition as the bargaining representative. This request was to be filed with the NLRB. Complaints against employers for unfair labor practices were likewise to be filed by employees or the union with the NLRB. If, after an investigation by a NLRB examiner, the complaint against the employer was sustained, the board could issue a cease and desist order enforceable in the courts.

In three decisions[5] in 1937, the Supreme Court of the United States confirmed the constitutionality of the new labor law. With the National Labor Relations Act reviewed affirmatively, it was clear that Congress had the right to require collective bargaining as an exercise of its commerce power. Employers had no alternative but to comply with the statute's provisions. In these crucial decisions, the Court took a long step

[5] National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937); National Labor Relations Board v. Fruehauf Trailer Co., 301 U.S. 49 (1937); and National Labor Relations Board v. Friedman-Harry Marks Clothing Co., 301 U.S. 58 (1937).

forward, not only in modernizing its interpretation of the commerce power, but in enabling the national government to deal freely with the realities of American business in the twentieth century.

Problems of Industrial Peace under the Wagner Act

Throughout the years while labor was achieving substantial gains resulting from the Wagner Act, strikes, lockouts, slowdowns, boycotts, and other interruptions and disorders associated with labor-management disputes persistently inflicted heavy losses upon industry, labor, and the general public alike. Hard experiences with work stoppages during and after World War II resulted in a less favorable attitude by government and the citizenry toward labor than had been true during the generally prolabor New Deal years.

Although there had been Commissioners of Conciliation in the Labor Department since 1913, mediation, despite efforts in over 100,000 disputes up to 1947, had never been entirely successful in solving the problem of strikes and labor unrest during the period 1939–46. Charges that the Labor Department was "partial" ultimately influenced the transfer of the conciliation function to the independent Federal Mediation and Conciliation Service set up in Title II of the Taft-Hartley Act of 1947.

The Wagner Act of 1935 continued to be criticized for being one-sided in its impact and protection. It unequivocally guaranteed labor's right of self-organization and of collective bargaining, it was tolerant of the "closed shop" (in which an employee must belong to the union to obtain a job), it outlawed company unions, it allegedly tended to create a labor monopoly, and it lacked balance in determining practices as unfair when indulged in by employers, but making virtually nothing unfair when done by labor unions.

By 1946, respect for the Wagner Act had so diminished in the public mind that a Republican Congress believed that it had a popular mandate to amend it. There was also a belief rampant in the nation that the arrogance of several outstanding leaders of labor had to be attended to and that the Wagner Act, which appeared to be partial to labor, should be amended to provide greater neutrality in the administration of industrial unrest.

The Taft-Hartley Act (Labor-Management Relations Act of 1947)

With the support of many Democrats, particularly Southerners, the Republican leadership succeeded in passing the Taft-Hartley Act over a vigorous presidential veto by President Harry S. Truman. However,

more than half of the new law was a restatement of the Wagner Act of 1935, as amended.

The earlier act's list of practices declared to be unfair, and hence unlawful if engaged in by employers, was now balanced off with a list of six practices made similarly unfair and unlawful if indulged in by labor.

For example, both management and labor are barred from discriminating against workers both as to employment (by an employer) and to union membership (by a union). Unions are not permitted to charge "excessive" or unfair membership fees. Unions as well as employers are guilty of unfair labor practices if they refuse to bargain once the representative agencies have been certified.

Employers are prohibited from interfering with employees' right to organize, "but the expressing of any views, arguments or opinions, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice."

The closed shop is completely outlawed and the union shop is permitted only when the majority of the employees in the bargaining unit favor it and are able to negotiate it into a labor contract. The union shop gives the employer the right to hire nonunion workers as long as they become members of the union by the thirtieth day of employment.

Shop foremen may be permitted to belong to unions, but a foreman's union has no bargaining rights under the act. Secondary boycotts (in which one party refuses to deal with another unless such other in turn will refuse to deal with a third) are forbidden. Also, prohibited by law are jurisdictional strikes (arising out of competition and conflict of rival unions).

Furthermore, the Taft-Hartley Act outlawed strikes by federal employees; bracketed unions with corporations in a general prohibition of contributions or expenditures of money in connection with federal elections; and made it illegal to require an employer (including the employer of the strikers) to recognize or bargain with one union if another union is the certified bargaining agent, or to force another employer (not the employer of the strikers) to recognize an uncertified union.

Another provision made it an "unfair labor practice" for a union to "cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed (featherbedding), or not to be performed."

The act required unions to file with the Secretary of Labor annual financial reports showing salaries of officers, other expenditures and

sources of income, as well as copies of constitutions and bylaws. (The Landrum-Griffin Act of 1959 made this requirement much more detailed and comprehensive.) Also limited for the first time was the union's right to handle health and welfare funds in other than trust accounts. Union leaders were to be held strictly accountable for the administration of such trust accounts.

Under the Wagner Act, the NLRB customarily excluded professional employees from all bargaining units of production and maintenance employees. The 1947 amendments, however, provided that the board could not decide that any unit including professional and nonprofessional employees was "appropriate" for collective bargaining, unless a majority of the "professionals" voted for inclusion into the unit.

The Taft-Hartley Act also provided for the postponement and "cooling-off" periods with respect to national emergency strikes and in cases where unions or employers failed to give 60 days notice of a desire to terminate or modify an existing contract. In the "cooling-off" situation, if 30 days pass after the termination notice is given, and no agreement has been reached by the parties, the Federal Mediation and Conciliation Service, as well as the appropriate state mediation agency, if one exists, is to be notified of the impasse.

In summarizing the Taft-Hartley Act, it should be stated that the most significant changes were those making certain practices of labor unfair and unlawful, thus balancing the former circumstances in which employers could be the only party charged with "unfair practices." The new law may have been conceived in an antiunion spirit, but both management and labor have lived with the revised labor law, and it is generally conceded to be workable. The Taft-Hartley Act now serves as a model for most state labor laws which are known as "little Taft-Hartley Acts."

One other provision of the 1947 amendment permits state legislatures to pass "right to work" laws which serve to negate the union shop agreements of either national or local firms resident in the "right to work" states. This means that in 20 states, mostly in the South and Southwestern areas of the United States, workers have the right to keep their jobs whether they are union members or not.

The Landrum-Griffin Act of 1959

Every 12 years a major revision has been effected in the federal labor law. The Wagner Act was passed in 1935, the Taft-Hartley Act in 1947, and the Landrum-Griffin Act in 1959. The exact title of the Landrum-

Griffin Act was the "Labor-Management Reporting and Disclosure Act of 1959." This official title is somewhat misleading because the reporting and disclosure aspect of the law was only a small contribution.

The *raison d'être* for the new legislation was the continued abuse by unions and union leaders, not only of their power over American industry, but also of the power held over union membership by certain union leaders.

From 1957 to 1959, the disclosures of the McClellan Committee (The Senate Select Committee on Improper Activities in the Labor or Management Field) with respect to labor racketeering, coercion, violence, denial of basic rights to union membership, and the continued use of secondary boycotts, threats, extortion, and destructive picketing led to further demands by the public and government officials for additional reforms.

The 1959 act has seven different sections. Title I contains a "Bill of Rights" for union members. It governs the democratic conduct of meetings and guarantees the right of each member to nominate candidates and to vote in each election. It permits union members to bring charges against leadership for being "unrepresentative." It also regulates the raising of dues and initiation fees.

Title II expands the original requirements of the Taft-Hartley Act with respect to filing detailed financial information with the Secretary of Labor as well as submitting constitutions and bylaws. The law also requires union employees to file information on any wages or remuneration received from employers with whom the union bargains, and for employers to submit the same type of data.

Title III requires reports on "trusteeships." In a trusteeship circumstance, a national union takes away autonomy from the local union and controls its finances from national headquarters. The purpose of some of these trusteeships is not so much to supervise local finances as it is to undermine political opposition in the locals and control delegates to the national conventions.

Title IV contains detailed provisions concerning elections, terms of office of union officers, and procedures for removal of union officers.

Title V also deals with financial administration. It governs fiduciary responsibility of union officials—bonding; prohibits borrowing by loans from the union treasury; prohibits criminals from holding union office.

Title VI prohibits extortionate picketing and empowers the Secretary of Labor to perform investigations concerning violations of the law.

Title VII supplements in a number of important ways the Taft-Hartley

Act: a tougher approach by the government to secondary boycotts, further restrictions on types of picketing by unions, amendments with respect to federal-state or jurisdictional questions, and regulation of the voting rights of economic strikers.

Since the main impact of the Landrum-Griffin Act was on the internal affairs of unions and the rights of union members, its significance to the average citizen is somewhat limited. It did have a very positive influence, however, on the further elimination of union corruption.

"Exclusive Recognition" and the "Appropriate Bargaining Unit"—Principles from Industrial Bargaining

It is not our purpose to delve too deeply into the content of industrial labor agreements. We are concerned with the tactics employed in school organization and negotiations as well as with emerging legislation affecting school districts. However, the reader should not discount the influence of industrial bargaining and federal labor law. Lacking state guidance as to the manner in which bargaining should take place in school districts, employee organizations and unions, particularly the American Federation of Teachers, improvised and attempted to make industrial bargaining and federal labor law applicable. In fact, in the Philadelphia negotiations in 1965, many of the teachers on the AFT team actually believed that the National Labor Relations Board had jurisdiction over bargaining at local governmental levels. Since 1965, negotiating teams, on both sides of the fence, have become much more sophisticated and knowledgeable about federal and state labor laws.

However, experiences in industrial relations are being taken to the school bargaining table. More and more AFT negotiating teams rely on "pros" recruited from the representatives of the Industrial Union Department (IUD) of the AFL-CIO. These labor professionals have had extensive experience in industrial bargaining and are drawing on this experience when confronting school administration negotiators. In the past two years the Philadelphia AFT local has employed two top labor negotiators, each with over 20 years experience in organized labor. In the second Philadelphia go-around in 1968, a heavy share of the negotiating burden fell on one of the most active and outstanding labor lawyers in the nation, M. H. Goldstein, a Philadelphia lawyer who spent a lifetime in representing labor clients in many industries and is consid-

ered by several large and powerful national unions as the men to be counted on in a "pinch."

In the early days of UFT's battle for recognition in New York City, its attorney was Arthur Goldberg, then General Counsel for the United Steelworkers of America. After Mr. Goldberg became Secretary of Labor, the UFT continued to retain his law partner David E. Feller, who was also Associate General Counsel of the United Steelworkers of America. Feller's persuasiveness helped win the right to an election in New York City.

Labor professionals, and more recently well-trained NEA staffers, come to the bargaining table with two principles carried over from industrial negotiations: "exclusive recognition" and the "appropriate bargaining unit."

Exclusive Recognition

There is no background or tradition of exclusive recognition in contract negotiations in public service; it has been borrowed from the context of private industrial bargaining. The Labor Management Act of 1947 provides that:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.[6]

When the Wagner Act legally required an employer to bargain with representatives of a majority union, militancy and strikes directed to recognition were dramatically reduced. In practice, before the NLRB would order an election (by secret ballot), it had to have evidence that 30 percent of the workers belonging to the unit wanted representation.[7]

The Appropriate Bargaining Unit

The concept of the appropriate bargaining unit has also been carried over into school negotiations. Although the Taft-Hartley Act made em-

[6] Labor Management Relations Act of 1947, Section 9 (a) (Public Law 101—80th Congress).

[7] *Ibid.*, Section 9 (c) (1).

tain minor changes in this area, the original requirements of the Wagner Act are still effective. Before an election can be held, the NLRB has to determine who will be included in the unit and hence eligible to vote. With respect to bargaining units in public education, should the "appropriate" unit include nurses, counselors, attendance officers, department heads, instructional supervisors, and principals in addition to teachers? Will a particular group be protected by law in saying out if its members don't want to be included?

With respect to this problem, the Wagner Act provided that:

> The (National Labor Relations) Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.*

Exclusive Recognition versus Other Possibilities

Few of the emerging state laws devoted to collective negotiations for school employees mandate exclusive representation clauses similar in all respects to the Labor Management Relations Act of 1947, which are the centers for industrial bargaining. However, an increasing number of teacher and nonteaching employee organizations are pressing in a determined way for exclusive recognition.

Employee Councils

Other forms of collective negotiations have representation on a less compelling basis than exclusive recognition. Historically, many school boards permitted some form of teacher council. These councils had influence with administrators and were permitted to confer from time to time through their representatives on matters of budgets, salaries, and working conditions. Lacking full-time staffs, and with their normal efforts often regulated by the administration, employee councils were generally weak and ineffective, and there is far away from exclusive recognition as it was possible to be. This weak type of representation is exemplified in the California, Oregon, and Minnesota statutes. The Oregon law permits "certificated personnel to elect committees to confer, consult and discuss in good faith . . . on matters of salaries and school economic policies affecting professional services." The weak position of teachers is pointed out by another provision: "thus nothing in this section is intended to

*Ibid., Section 9 (b).

affect the powers and duties of the district school board over matters of salaries and economic policies affecting professional services."

Specifying that only certificated personnel can represent certificated personnel, this statute bars the teachers from employing full-time negotiators to come to the bargaining table. This statute is reminiscent of the company union which was outlawed by the Wagner Act.

Joint Representation—Is it Possible?

At times, when negotiating with a majority organization, a minority organization becomes more active than ever in wanting to meet with the administration and to present its own ideas on how to run the school system. Would it be possible for a system of joint representation in a school district to work well if each organization were to bargain only for its own membership? It is probably illegal, and certainly impractical, to attempt to have two sets of agreements simultaneously with the same class of employer. It would be bad enough to have the type of fragmented bargaining in which a separate contract is negotiated with representatives of a junior high school teachers' organization at the same time that another is negotiated with an elementary teachers' association. A contract with two groups covering the same class of employer would be chaotic and is unthinkable.

Proportional Representation

In the early sixties, when various employee groups in New York City were attempting to influence the Board of Education to permit an election for an exclusive bargaining representative, one organization, considered to be the weakest among those contending for recognition, switched its tactics and recommended that the board approve the doctrine of proportional, rather than exclusive, recognition. The strategy was to win a few seats on the proportionate panel and thus retain some political influence in the resultant negotiations. Sometimes a relatively insignificant organization might be able to "divide and conquer" by creating trouble within the panel.

The 1965 Michigan law now has proportional representation and provides exclusive recognition; however, in the early sixties in Dearborn, Michigan, bargaining strength was equal between the AFT and the NEA chapter, and the Superintendent continued to meet regularly with both organizations. The AFT kept pressing for an election to choose an exclusive representative. The Board, however, recommended the formation of a Classroom Teacher Negotiating Committee, a proportional representation device, by which membership was to be based on the fol-

lowing formula: for each 100 members, an organization was to have one representative on the Committee. This scheme led to a great deal of procedural bickering and internal dissatisfaction. Actually, bargaining never took place on a representative basis. In 1964, the Committee consisted of eight members representing the AFT local and four representing the NEA affiliate. With a majority on the Committee, the AFT determined that the team doing the actual negotiations with the Administration would consist of five persons elected by a majority vote of the Committee. Unsurprisingly, five AFT members were elected and, the NEA knew little about what went on in negotiations. In 1965, under the new state law, the AFT was elected as the exclusive representative by the Dearborn classroom teachers.

Advantages of Exclusive Recognition

The principal advantage of exclusive recognition is that responsibility is fixed very specifically in the organization and in the negotiators representing teachers. If the exclusive representative does a poor job, it can be voted out at the next mandated election date, depending on law or board guidelines.

Despite the variation in goals and objectives of primary grade, junior high, and senior high school teachers, all are forced to get together before negotiations and compromise their aims into a unified effort. After a while, internal organizational discipline usually takes hold and helps in winning a strong contract. Sometimes, of course, it does not work. A case in point is a recent experience in Philadelphia, where the technical high school teachers still show great dissatisfaction with the two contracts negotiated in 1965 and 1966 by the AFT, the exclusive representative. Despite two successive pay hikes which moved Philadelphia's teacher salary schedules to near the top in the nation, technical high school teachers in Philadelphia still spend one hour more each day in school than do the academic high school teachers. This longer day applies to teachers of English, social studies, mathematics, science, and other general subjects in the technical high schools as well as to the teachers of electricity, metallurgy, and so forth. In December 1966, these technical high school teachers began picketing the residences of the President of the AFT local, the President of the School Board, and the Superintendent, and the Administration Building. Many other cities have this same problem. It stems in part from the traditional requirements of the state governments that vocational education qualify for subsidies under the federal Smith-Hughes Act and other federal laws.

In the main, however, the elementary, junior, and senior high teach-

ers made their peace in Philadelphia before the negotiations began. Proponents of exclusive recognition and of the union shop in private industry have stated for many years that the principle of majority rule in our democracy applies equally to labor relations and elections for governmental representatives.

Exclusive Recognition in School Bargaining Not Synonymous with Union Shop

In private industry, under federal law, the exclusive bargaining agent usually wins a union shop agreement. This is not yet true in collective negotiations in public education.

In the recent election in Philadelphia, both AFT and NEA campaigned for an exclusive representation clause in the proposed contract. When a contract was about to be signed giving the AFT exclusive representation, the NEA, turning on its own platform, pressured the Superintendent to deny exclusive representation to the AFT in the contract. The NEA feared, and rightly so, the demise of its own organization if forced into a relatively inactive minority role.

The first Philadelphia agreement with the AFT did provide exclusive recognition, but it did not require membership in the AFT as a requirement for holding a position as a teacher in the Philadelphia school system. Philadelphia did not give to the union the highest order of union security now possible under the federal law. The Labor Management Relations Act does not apply to political subdivisions, nor businesses not in interstate commerce, nor railroad employees, nor nonprofit institutions such as hospitals. The Philadelphia agreement, while permitting the right of checkoff for members of the AFT, also permitted minority organizations such as the NEA local to have similar rights. This would never be permitted in a similar situation in industrial bargaining.

In a contract which one of the authors negotiated recently in Wilmington, Delaware, for the Wilmington Board of Public Education, a demand was made by the American Federation of State, County and Municipal Employees for a union shop in all its "federal" particulars. The contract required that school custodians who do not join the union after 30 days of work be discharged. The election in Wilmington, which was won by the AFSCME, was held pursuant to a recently enacted Delaware statute requiring school districts to negotiate with nonteaching employee groups. There was nothing in the law which insisted on or barred a full-union shop; but the union, following the experience

of its sister unions in the AFL-CIO in industrial plant maintenance and operations, pressed for the same procedures in the public sector. Union professionals can be very persuasive in telling school board officials that if it is good enough to be part of the federal law, it should be followed in school board negotiations.

Union Shop versus Compulsory Membership Litigation

AFT locals press for exclusive recognition based upon the tradition of industrial collective bargaining engaged in by sister unions under the umbrella of federal law. So far, there have been relatively few attempts by the AFT to tie this up with a union shop contract, although its contract in the 1950's in Butte, Montana, did receive national attention because of a union shop clause in the working agreement signed annually by the Butte Board of Education and the AFT local. The clause read in part:

> Any teacher who fails to sign a contract which includes the provisions in this Union Security Clause and who fails to comply with the provisions of this Union Security Clause shall be discharged on the written request of the Union, except that any such teacher who now has tenure under the laws of the State of Montana shall not be discharged, but shall not receive any of the benefits nor salary increase negotiated by the Union and shall be employed without contract, from year to year on the same terms and conditions as such teacher was employed during the year 1955-56.[9]

The harshness of this clause is obvious, even though it is tempered for teachers with tenure. When subjected to a court review, the clause was thrown out by a State Supreme Court decision in 1959. The case had been brought to review by a teacher with tenure who was not a union member and who was denied a salary increase which had been successfully negotiated by the AFT local for its own members.[10]

Not only the AFT is interested in union shops. The Riverview Gardens Board of Education in Missouri required that teachers be members of the state and local affiliates of NEA in order to receive benefits of the local salary schedule. One of the teachers brought suit on a charge of coercion against the Board of Education to obtain a recovery equal to

[9] "Teachers Negotiate with Their School Boards," U.S. Department of Health, Education, and Welfare, OE-23036, Bulletin 1964, No. 40 (Washington, D.C.: U.S. Government Printing Office, 1964), p. 20.

[10] Benson *et al.* v. School District No. 1 of Silverbow County *et al.*, 344 P. (2d) 117 Montana (1959).

the amount of dues paid to the affiliates. In a surprise decision in 1961, a Missouri court upheld the right of the school board to insist on NEA membership before a teacher could be placed on the local salary schedule.[11] While the latter case is not a union shop case in the strict sense, the postures of both NEA and AFT were similar during litigation.

The Missouri court held that the school board had the right to adopt the "membership provision" under its broad statutory authority "to manage school affairs and to make all needful rules and regulations for the organization, grading and government in the school districts."

The teacher, once having accepted the salary according to the schedules during the period of his employment, could not recover from the board the dues he had paid to the NEA affiliates. The court indicated that the plaintiff could have worked in the school system without joining NEA if he had been willing to have "an individually negotiated compensation."

The NEA's Position on Exclusive Recognition

The NEA takes the position that a request for rights to be recognized exclusively and to negotiate on behalf of all professional employees should be accorded the organization representing the majority of employees in a school district. NEA claims that a request for such a provision often raises the charge of illegality.

> No reason in law requires the board of education that desires, as a matter of policy, to formalize its relationships with employee organizations to ignore the fact that the organizations are different in terms of employee support. Such recognition does not discriminate against minority organizations, if they exist, or against individual employees. Indeed, to ignore these differences is to indulge in gross discrimination against the members of the majority organization whose collective voice is entitled to be given much greater weight than the voices of minority organizations.[12]

Despite this fine statement, when NEA loses it still wants to discuss salaries and wages and working conditions as a minority organization with a board or superintendent.

NEA guidelines do state that when a majority organization is ac-

[11] Magnuheim v. Board of Education of District of Riverview Gardens, 347 S.W. (2d) 429 (1961); motion for rehearing or for transfer to Supreme Court of Missouri denied July 11, 1961.

[12] National Education Association of the United States, Office of Professional Development and Welfare, *Guidelines for Professional Negotiation*, rev. ed. (Washington, D.C., 1963), p. 16.

corded the right of exclusive recognition, the minority organizations and individuals should be guaranteed "testimony rights," that is, they should be given the opportunity to present their views to the school board. NEA claims that if testimony rights are protected, there is nothing illegal in a board granting exclusive recognition to one organization as long as the results of the negotiation apply equally to all the professional staff, regardless of membership or nonmembership in the majority organization.

The authors interpret the "guarantee of testimony rights" as the right to appear before a school board at budget time and to participate in public hearings where all citizen organizations in the community might be invited.

This is not the same as the right of a minority local, whether it be the AFT or the NEA, to request private audiences with the superintendent, at which time they would discuss those items that they would like to see gained by the teachers. In our experience in this area, we have found that as soon as such a meeting is held with a superintendent, the minority organization attempts to take credit in the public newspapers for concessions made. Immediately there are charges of bad faith by the majority organization which has not been a party to these private discussions. We agree that "testimony" is all right and should be permitted, but not private discussions with the board's chief negotiator or with the superintendent, during negotiations.

Composition of the Bargaining Unit

A major question now current which seems to be derived from the pressures of the two major teacher organizations is what the composition of the bargaining unit should be. It could follow one of two basic patterns. Principals, instructional supervisors, department heads, and other individuals holding responsibilities for teacher performance ratings—"certificated" employees—could all be in the same unit, with a single committee representing all professional employees.

Opposed to this could be the restrictive unit that excludes principals and other supervisors. The possibility that an NEA unit might include all members of the educational hierarchy is greater since all hold membership in the National Educational Association. This is less possible in an AFT-negotiated agreement since there are fewer principles and other supervisors holding membership in the American Federation of Teachers.

Binding Arbitration—A Carry-Over from Private Bargaining

A third parallel that skilled professional negotiators (labor professionals) generally follow in school negotiations is that of pushing arbitration as a proposed last step in a grievance procedure. It is true that 90 percent of the contracts in private industry do have arbitration clauses, but this provides management with a tool to prevent strikes and walk-outs during the life of the agreement. In other words, bargainers in private industry trade off "no strike" clauses. In the public sector, state, county, and municipal employees are usually enjoined from striking by state laws. "No strike" provisions in school board negotiations would be redundant, although they can be secured easily in exchange for arbitration clauses. This points out how the newly evolving techniques of school collective negotiations are forced to employ private bargaining strategies despite a major difference in the climate and legal context of the bargaining.

Alternatives to Binding Arbitration

When school authorities face demands for a terminal step in grievance procedures, alternatives can be employed that may provide fair hearings and possibly public disclosure. One alternative would be a final appeal to a joint arbitration board consisting equally of school employees and school management. In the event that the board is unable to agree as to its findings, an impartial chairman who might be a professional arbitrator or an educator of great repute would be invited to participate. He would then cast the deciding vote in the event of a deadlock and the decision would be tendered to the superintendent, who could accept or reject the recommendation. At this point, however, in view of the eminence of the impartial chairman and the gravity of the situation, the findings would probably be made public. Thus the superintendent would have a tough job to justify a rejection of the panel's recommendation. Nevertheless, this type of advisory arbitration falls far short of the binding arbitration desired by unions. Decision-making authority placed in outsiders would be the start of striking powers vested by law in the school board and in the licensed superintendent.

Unions employing private bargaining strategy suggest language to re-

strict the role of an outside arbitrator, thereby hoping to sway the board's negotiators. The very informality of arbitration procedures designed to avoid the more formal judicial procedures in U.S. courts precludes the possibility of restricting the influence of an arbitration award. Throughout the United States arbitrators have been growing in importance as contract interpreters, and many large companies are now giving increased consideration to ways of avoiding arbitration decision-making.

The Legality of Negotiations

Despite the fact that the local board of education is an agency of the state and is given authority under legislation, it is also a vehicle for retaining local control over subject matter and quality of the community public school program. School directors are responsible to the citizens of the community they serve. Hence, relationships with employee organizations which serve to improve the quality of the school operation are pertinent to a board of education. Bargaining pressures of employee groups desiring recognition or contract discussions cannot be dismissed by school directors with the attitude, "Let the state government tell us what to do—and then we'll do it."

The overwhelming majority of school districts (85 percent) provide for election of school board members; hence, board members must be sensitive to the attitudes of their constituents about collective negotiations. However, since a substantial number of their constituents are members of labor organizations, board members should not fear that the voters will react negatively if the subject of unions and contracts is discussed at the board's public hearings. Unionism is part of the American way of life. The only thing new about labor relations in the issue of collective bargaining is that it is new to public education.

Is the Legality of Negotiations Vulnerable to the Type of Demands?

In private industry, company negotiators make certain that the federal law is observed, and they fight hard for the preservation of management rights. Some experts believe that managerial prerogatives are sliding away, but many companies such as the General Electric Company still practice the "hard line" and have good labor-management relationships.

What topics are to be considered negotiable in the school context? If both the AFT and the NEA were to limit their demands primarily to items of economic welfare, that is, salaries and fringe benefits, there would be few problems of legality. While the NEA historically moved slowly with its level 1 and level 2 agreements, more recently level 3 agreements have become much more comprehensive. Nevertheless, NEA agreements up to now have involved less sacrifice by the board or the superintendent of the time-honored unilateral right to set educational policy, than have AFT agreements. In the Philadelphia and New York City AFT agreements, the reader will find varied negotiative demands which actually relate to the entire area of educational administration and policies. Even the subject of salaries and working conditions leads to the question of financing expenditures through revenue and tax policies. However, discussion of wages and other economic benefits is more traditionally accepted by school boards.

At the present time, AFT contracts are generally much further advanced than NEA agreements in the direction of involving all aspects of school operations. However, the newest agreements negotiated by NEA now appear to be moving in the same direction.

The authors found in the recent Philadelphia election context that no matter how many things the AFT asked, NEA campaigners could think of an equal number, if not more. When the AFT won the election and negotiated the first agreement, there were cries by the NEA that the contract terms had not gone far enough in guaranteeing such things as class size, limits, preparation, time off for unions, elimination of nonteaching assignments, and so forth.

The NEA Approach to Subject Matter of Negotiations Is Supposed to Be Professional, Not Industrial—But Is It?

Recently, Donald M. Wollett, Counsel for the NEA, was asked what the subject matter of negotiations should be. First, he made the point that concepts of what is negotiable and what is not as drawn from the decisions of the National Labor Relations Board, the state labor relations boards, or state mediation agencies are not relevant. He then indicated that the broad scope of matters subject to the process of bilateral determination, under "professional negotiation" procedures, rejects the "industrial relations" concept, which delineates "working conditions" from "management prerogatives." Wollett says that the NEA approach

is predicated on the following rationale: (1) That the case for improved teacher welfare rests on the necessity for improving the quality of public education by attracting and retaining a better teaching force and by encouraging in-service training and self-development, and (2) Teachers are "employed" professionals who have the same transcendental interest as self-employed physicians and attorneys in all matters which bear on the standards of their practice. According to the NEA Counsel, even policy matters impinging on "professional interest" are negotiable!

NEA Position Leads to Joint Decision-Making

Wollett provides an illustration of his logic. An NEA affiliate might demand of a school board a substantial upward adjustment in salary schedules for all levels of experience and preparation. The school board, on the other hand, faced with a limit on its total funds, would rather apply available funds to further support of research, experimentation, or innovation or possibly to increase the number of teachers and reduce the pupil-teacher ratio.

The school board's position in this illustration is that research expenditures and pupil-teacher ratio reductions are "managerial prerogatives" which might be discussed, but on which they would not negotiate! The NEA believes that the board's posture in this case would be "repugnant" to the spirit and purpose of "professional negotiations."

Apparently the NEA takes the position that an acceptance of "management's prerogatives" would give a trade-union context to the NEA's demands. NEA would then be like a union pressing for improvements in teacher welfare without reference to its impact on the quality of the educational program. In other words, when a school board is "on the horns of a dilemma" in the need to allocate funds for reducing the pupil-teacher ratio or increasing salaries, this decision should be a subject for professional negotiations. It appears to the writers that the logic involved in the NEA position is a justification for calling "collective bargaining" "professional negotiations." In our opinion, the NEA position as outlined by its Counsel, Donald H. Wollett, comes very close to the position taken by the American Federation of Teachers that *everything* is negotiable. In private industry, also, labor unions press vigorously from year to year to scale down "managerial prerogatives."

"Professional Negotiation" Is Better Than Collective Bargaining—Why?

The National Education Association in its recent *Guidelines* stated: "There are several differences between professional negotiation proce-

divers devised specifically for public education, and private collective bargaining procedures adapted to public education, which make professional negotiations better."[46] NEA directs its attention to five major conditions:

1. REMOVAL FROM LABOR LAW AND AGENCIES. The NEA believes that it is better to remove teachers and school boards from the operation of labor laws. It does not want collective negotiations in schools influenced by the hundreds of state and federal labor laws, court decisions, and labor board rulings that have grown up around collective bargaining. The inference to be drawn is that these rulings are not bad, but are inappropriate since they were designed to apply to private employment and, therefore, it is unwise for education and school boards to become embroiled in these past decisions. The original objectives of state labor laws had nothing to do with public school employment.

2. INCLUSION OF ALL MEMBERS OF THE PROFESSION. As was indicated previously, NEA desires to include all members of the professional staff in its negotiations. Under collective bargaining procedures supervisors are excluded from the "protection of the law." This means that many members of the profession, such as supervising teachers and administrators, will be excluded from the bargaining unit if the teaching profession is placed under labor laws.

NEA does not always agree that it is good in every instance to have supervisors in the bargaining group. This decision should vary from community to community depending upon the local climate. In some communities negotiations would probably be more successful if carried on by classroom teachers only. On the other hand, if negotiations could better be carried out by including all professional employees, this should be possible and not barred by statute. NEA looks to a possibility in which a joint committee might be formed of a classroom teachers' association and a principals' association for negotiation purposes. The AFT takes a position diametrically opposed to NEA on this point: "It would be like having the boss in the same union."

3. USING PROFESSIONAL CHANNELS. NEA wants collective bargaining of bypassing regular administrative channels at certain stages in the negotiation process. For example, in professional negotiation, NEA claims that association representatives and administrative staff meet to discuss

[46] National Education Association, *Guidelines for Professional Negotiations* (Washington, D.C.: 1965) Appendix B, p. 46.

proposals and come to preliminary agreement about possible before meetings with the board of education. In this way, details can be worked out before entering a major effort with the school board. The NEA believes the AFT bypasses these channels completely, hence relegating the school superintendent to the single role of management's agent.

The writers take a position entirely opposed to NEA's point of view. Actually, asking negotiative demands of the board cold and insulating them with details would be a bad mistake. It appears to us that the NEA proposal actually makes the superintendent a party to the demands upon the board. The board is paying the superintendent to be its chief executive officer; he ought to take a position on contract demands, be empowered to negotiate on behalf of the board, and finally submit the contract draft to the board for its ratification.

The NEA takes a position that direct demands of the board are necessary, and that, if the superintendent were to take an adverse position to NEA's demands, he would be dishonored if the board overruled him.

The NEA does not understand that in the bargaining coalition of private industry throughout the United States, the chief executive is given general guidelines by a bargaining committee of the board of directors, but that if it becomes necessary to reach agreement and to make compromises, it is no disgrace to the chief executive to return to the board and ask for further advice and guidance.

The AFT position seems to be more realistic in acknowledging the superintendent as the chief executive of the system. As one board member told the writers during the 1965 Philadelphia negotiations: "We don't want to get involved in every detail of the agreement; we know that if we were to read every item, we would find many that we do not like. If our superintendent has involved himself in every detail of the agreement and is satisfied with its unity and that he can live with it, we want to support our superintendent."[1]

A SUPERVISORY ORGANIZATION OR AN EMPLOYEE. NEA accuses the AFT of attempting to bargain public school employees by dividing classroom teachers according to grade level or subject taught. They believe that this might occur because AFT would follow the precedent of private industry in which in certain instances, the composition of the bargaining unit could be unduly restrictive.

In the early days of school negotiations, there might have been adequate grounds for NEA's charge. The NEA criticism involves the following cases:[2]

[1] *Ibid.*, pp. 47–48.

A state labor conciliator took jurisdiction of a dispute on what was a proper bargaining unit for teachers. The union contended the proper unit was limited to high school classroom teachers.

In another instance cited by N.E.A., the union contended that the bargaining unit consisted of vocational high school teachers only.

N.E.A. condemnation of the AFT leads to the conclusion that under AFT direction kindergarten teachers or English teachers might establish themselves as a separate bargaining unit, as possibly would junior high or senior high school teachers.

In the opinion of the writers, AFT would not agree to such situations. We found the opposite true in the New York and Philadelphia organizations. The AFT position today is to consolidate all classroom teachers, counselors, attendance officers, and nurses into one integrated bargaining unit.

A more sensational charge was answered by the writers. Professional organization, as defined by the N.E.A., would establish educational Councils only for mediation and appeal from an impasse. These appeals would be part of professional organizations. They would be established through state education boards, and not employ "collective bargaining" procedures, in which, according to N.E.A., appeals would have to be taken through labor boards who would employ excessive legal procedures from industrial employment and impose them upon the teaching profession.

The writers found nothing in the Wisconsin labor board experience to justify the criticism of labor boards by N.E.A. With emerging legislation in Michigan and Rhode Island, as well as other states, of the collective bargaining type, it would be unfair for any organization to undermine confidence in public officials who have a complex job to perform under trying conditions.

The AFT Way—What Collective Bargaining Means

According to Charles Cogen, President of the American Federation of Teachers, "The real difference between 'collective bargaining' and substitutes schemes like 'professional negotiations' lies in the fundamental difference between the AFT and the N.E.A. The N.E.A. approach is a grudging attempt to adapt to a new idea without disturbing the status quo. The AFT is frankly seeking to establish a new status for teachers by means of a bargaining process."

An analysis of AFT literature on collective bargaining in public education ("the AFT way") reveals the following basic premises:

a. Collective bargaining is an orderly process developed by labor unions to establish a democratic relationship between employer and employee. The basis of collective bargaining is recognition of the right of classroom teachers to negotiate through their own organization with their school board on such subjects as salary, working conditions, welfare benefits, and professional matters.

b. Teachers choose their collective bargaining agent in a democratic manner—written ballot in a secret election supervised by an impartial agency. After such an election is held, everyone knows which organization the teachers desire to represent them. Teachers become united.

c. Salary negotiations are a central part of all collective bargaining negotiations. Negotiating teams from both the school board and the collective bargaining agent must face to face around the bargaining table with previous facts readily accessible.

d. Only under the above conditions can teachers really be sure that their views are given complete consideration. With the coming of collective bargaining, the days of unilateral decisions are at an end.

e. "Working conditions" are one simple words that often supply the answer to why teachers leave teaching. According to the AFT, teachers use the collective bargaining to limit class size, lower supervising teaching loads, remove unwise and time-consuming chores, negotiate an equitable transfer policy, insure clean and safe environmental conditions, provide adequate parking space, and bring about practical solutions to many problems that confront them. Once these problems are settled to the mutual agreement of both the board and the collective bargaining agent, the solutions are transformed into concrete language. After the agreement is published, teachers, principals, school board members, and anyone concerned can easily answer any questions by referring to the particular provision involved.

f. Teachers are professional educators, but they are also like people everywhere concerned with welfare. Some become ill during their careers, some require expensive medical care and hospitalization. All teachers need a sound pension plan to insure well-being and retirement. Protection must be provided to protect the family should tragedy occur, and liberal sick-leave provisions, personal leave allowance, pension improvements, and other welfare items are usually part of a normal AFT negotiating package.

7. A teacher does not think about grievance procedures until a problem arises that needs a resolution in order to keep morale high. Without a contract, the only recourse a teacher has is appeal from one administrator to another. Teachers need fair grievance procedures which allow for appeal to an impartial body. In addition, teachers should have the right to be accompanied and advised by representatives of the collective bargaining agent.
8. Teachers need to meet on regular schedule with the school principal to discuss local school problems, such as class scheduling, duty rosters, class rotation, and other problems which can be solved by mechanisms set up through collective bargaining procedures.

Are Sanctions Distinguishable from Strikes

At the 1967 NEA Convention, Executive Secretary William Carr expressed on the results of sanctions in effect for a year in Utah and on the threat of sanctions and its result in Idaho. He also expressed on the possibility of sanctions and the alternative that had been tried in Kentucky and on the imposition of sanctions on a statewide basis in Oklahoma. Carr viewed the NEA's activities as very successful. What are sanctions and how do they work? For example, said Dr. Carr, "These sanctions against Oklahoma include *ensure* through with public notice concerning the substandard public educational program in Oklahoma; *notification* to placement and certification service of association's conditions in the schools; *warning* to active and student members of the NEA currently employed in Oklahoma, that acceptance of employment in a *new* teacher in Oklahoma may be considered unethical conduct; and *notification* to educators presently employed in Oklahoma who decide to leave the state."[1]

As far as the Oklahoma experience is concerned, NEA sanctions are punitive measures entirely in the same league with strikes. The objective of sanctions is to dry up the supply of new teachers and eliminate as many of the existing teachers as can be driven away. One characteristic of sanctions is that teachers who can't afford to eliminate are not compelled to do so and no one is voluntarily or involuntarily out of work. According to Dr. Carr, "no one is violating the law."[2]

It is the opinion of the writers that the strike, which is supposed to be a weapon used only by labor unions in private industrial bargaining, is no more lawful a weapon than the sanction. Therefore, the attitude of

the NEA in favor of sanctions and of the AFT in favor of strikes are distinguished by semantics, not by practice.

Summary, Review, and Implications

When one tries to distinguish between the various aspects of industrial collective bargaining and collective negotiations in school districts, the following are of major importance:

a. In the federal government since the Wagner Act in 1935, the Taft-Hartley Act in 1947, and the Landrum-Griffin Law and its amendments in 1959, there appears to be a body of legislative documents providing the ground rules for collective bargaining in the private sector. These ground rules not only tell the intent of Congress on collective bargaining in labor-management relations, but also set up machinery, namely, the National Labor Relations Board to decide what is a fair or unfair labor practice, for citing the offenders, and for issuing penalties and cease and desist orders. Until recently, few states had similarly basic legislation for labor relations affecting school districts, nor were there many school districts with local guidelines.

   Until 1962, most of the state laws were relatively unsophisticated compared to the national statutes. At the present time in most states, the public school administrators lack the kind of information and procedures somewhat parallel, but not to proceed as he does in most cases.

c. A review of the bargaining techniques of the American Federation of Teachers, AFL-CIO, and the various local affiliates of the National Education Association shows a great deal of ignorance in the face of negotiation and negotiative techniques. There appears to be more knowledge of the political aspects of bargaining, such as how to put pressure on the public and receiving bodies to raise beleaguered school boards to find the funds necessary after negotiations. The more general ignorance of the face to face of negotiation, as more practiced in private industry, is true of the school board and its representatives, the administrators. Very few major school districts in the United States employ trained specialists at a rank equal to those in industry, often called Vice-Presidents for Industrial Relations. Success, training, and know-how in collective bargaining are

required to organize a school district adequately. In fact, until recently, most school districts were pitifully unaware of many of the major requirements for a good public personnel administration. Without sound personnel policies and an adequate system of personnel records, school boards faced with negotiations were from a definite position.

Without adequate personnel policies many school districts in organizing or bargaining were exposed to the demands of the union instead of being able to say: "Well, this is the Rights of Organization resolution, which the school board passed in 1965. We would like this statement to be part of the agreement." Better prepared, a school district might say: "Regardless of whether or not the subject deals with educational services, patrons, maintenance men, bus drivers or bus drivers, we already have a policy for sick leave, one for paid vacations, and one for holidays. Our policies have consistently been applied to all board employees. For example, all employees with 15 years service, receive three weeks vacation, those with 20 years service get four weeks vacation. We cannot negotiate with you on behalf of teachers (or secretaries) and wind up with a series of fragmented arrangements applying differently to each group."

Currently, the unions expect that they only represent the employees in their bargaining unit and they are not concerned about school secretaries or bus drivers. But, they will nevertheless take advantage of the point made by the administration that there ought to be coordination in personnel policies. Districts that are about to develop personnel policies because sooner or later they will have to negotiate on these or about them are making a tactical blunder. Private industry has in the past few years been emphasizing and developing new and better personnel policies and uses its knowledge as a bargaining technique when negotiating with the union.

9. One of the major defects in school district administration with respect to collective negotiations is the fact that very few administrators have had actual business experience. It is incumbent on the district when developing a committed personnel department to try to appoint people who in addition to having an understanding and awareness of the problems of public education, have industrial background and possible bargaining experience. More and more school districts are in need of people with business background experience. School districts have already hired accountants, purchasing agents, and data processors for other functions. When it comes to the personnel function, we also need expert employee relations

people and negotiators with a background in business. A teacher is not just a person licensed by the state to teach, but is a human being with problems involving personal relations, human relations, motivation, aspirations, fears, and other personal difficulties.

Personnel experts with backgrounds in private bargaining also understand the techniques of how to get information. For example, when one negotiates with the representatives of the school secretaries, a knowledge of salaries paid secretaries in equally responsible work in legal offices and private industry is very necessary. The same rationale can be applied to school bus drivers and truck and motor bus drivers. When bargaining with custodial personnel, the business expert in the personnel department ought to know what is being paid to employees in private industry who are members of the building service unions.

When negotiating with teachers, the same market survey techniques should compare pay for competing school systems as well as for persons with the same background and qualifications employed by city governments, private social work agencies, and so forth. It is obvious that a school board can't pay a salary less than that paid by the state relief board or teachers might take positions as relief visitors.

Generally, teacher organizations have school board representatives in the new bargaining areas with one common characteristic—namely, a lack of knowledge as to how to negotiate and, what is even more important, what is negotiable. In 30 years of private industry bargaining since 1935, unions and management have developed a sound body of tradition and practice as the right to manage and proper subject matter for negotiations. In the experience of the authors, it appears that, despite semantic arguments, the NEA and NSEA are agreed in viewing practically everything as negotiable.

In private industry, there is an historic pattern of demands and the guidelines remain clear. When negotiators for the union come together with representatives of management, they know how not to invade management's rights; it would be surprising to hear management say that union demands would nullify management prerogatives. Unions in private industry would not think of trying to get involved in the financial operations of the company, the work processes of the company, the marketing programs of the company, or other essential top management questions. With teacher unions, however, demands often get into areas which top management in private industry would consider to be unnegotiable.

We learned as we went along during the first negotiations in Philadelphia. In the early unions, demands for smaller class size, restriction on the number of teaching periods for each teacher, control over the variety of subjects a teacher might be asked to teach, definition of counseling duties, et cetera, all appeared to us to be nonnegotiable. Later on, however, we realized that a great many of these items, which on the surface appeared to be nonnegotiable, are in effect part of the work-rule pattern of teachers. It is not clear to anyone as yet in public school negotiations as to what is not negotiable. School board lawyers, negotiators, and superintendents, in the first stages of negotiations, ought to take a position that anything involving educational policy or any power clearly delegated to a board by the state legislature or the state constitution is not negotiable. As the parties continue to negotiate in good faith, understandings can be reached and proper language found to include grievance union demands. As the new state laws are being passed defining subjects for negotiations, almost everyone will no longer be able to take refuge in the position, "It's not negotiable."[1]

3. The AFT negotiating teams are now being reinforced by experts from the private labor realm. Walter Reuther is adding funds and prestige to the enlarged work of the Industrial Union Department of AFL-CIO and is influential in seeing each local negotiating team working at the school board level with professionals from the labor realm. While NEA does not have the same assistance, it appears to be going through extensive training programs for both teachers and professional staff and is spending a great deal of money to catch up quickly in the art of negotiations.

School boards, lacking their own staff experts, must look to outside consultants—professors of labor relations, expert negotiators, and labor lawyers—to assist them in their negotiation responsibilities. The weakness in the board's position is that most of these consultants are not familiar with the extensive subject matter of collective agreements over local issues, curriculum, issues, salary schedules, retirement, and the many complex facets of educational administration and school law. Consultants also need training to become experts in Educational Administration.

4. Besides major differences between school and industrial bargaining is that a strike in the private sector causes little community interest unless it has national importance. When schools are concerned,

however, news of walk-outs and threats of auctions or any other type of power play will receive tremendous coverage in the local newspapers. The press almost becomes a party to the bargaining. As a result, full disclosure of negotiation demands and expenses make school administrators and boards of education very close to public support and the image of the board. While citizens want good schools and qualified teachers, they worry that the results of bargaining may come at increased administrative costs that themselves being evaluated daily, not by the educational achievement of the pupils, but by their public image of "fairness."

7. Despite the fact that teachers had many committees in the years before collective negotiations, they are now working in a new environment with which they have had little experience. Adjustments in attitude must be made by both teachers and administrators or each will view the other side from a military position. Historically, even with company unions, administrators relied freely on teacher representatives. These discussions led to a mutuality of interest and concern for the education of children. We hope that the new bargaining environment will not create a preoccupation exemplified of such interests that neither side will be able to resume normal business cognition in the operation of schools.

8. In many school district negotiations, the AFT or NEA may appear before the board and before the superintendent of its negotiating representatives and ask for many hours without advance preparation. This was not the case, however, in the AFT and CFT negotiations conducted in Philadelphia. Prior to the AFT bargaining unions, the AFT had devoted over six months to acting up their membership into concise panels so that when a demand was to be put on the agenda, the AFT had thoroughly discussed it in meetings throughout the city with elected personnel in each school level. Experts on special education, junior high schools and so forth, were completely prepared to meet administrators in documenting demands. The administration's negotiators had likewise easily not devoted as much time to the preparation of a counter-demand, and had to develop counterdemands in response to AFT. Among the demands that finally were developed on the part of the Superintendent were a more flexible teacher transfer policy, a policy for in-house faculty integration, and a request for a longer school day. Unfortunately, even these worthwhile requests did not have the months of careful study and preparation necessary to do the

bus possible job in bargaining. Most unions do not prepare for negotiations until after an election. By that time they are already behind schedule.

By and large, demands and counterdemands, as we have observed them in crisis bargaining in various places, do not have the economic depth of study. When facts are available to both sides, more reasonable discussions and negotiations will result. A third device might not be against the recommendation of a twelve-member panel if it is justifiable and will help to achieve more effective school operations.

8. What have we learned from private industry about exclusive recognition? The idea of permitting employees to be represented by only one group and eliminating minority groups is repugnant to free to school administrators. Exclusive recognition was described in the Wagner Act of 1935 and is subsequent amendments as the national labor law. Those who have to come to the idea of exclusive recognition for school employees, particularly since most have now provided statutory methods for employees to take their grievances up with the principals, superintendents, boards, and with even more appropriate means of public instruction on an individual basis. Hence, even after exclusive recognition is negotiated, it cannot be to conflict with the rank members. Another important element which is vague in school districts have to determine who should represent school employees or another employee group? The answer was determined an election in private industry. It is very clear that decisions may be ordered by the NLRB upon the application by petition of 30 percent of the employees of an appropriate bargaining unit. Only a few cases that have caused mandatory bargaining have specifying in some cases how elections should be handled in absence of any mandatory bargaining law, school districts could also have to hold an election.

10. The authors believe that the present divided situation in school labor bargaining will lead to further fragmentation of bargaining units. In private industry, it is well understood what is meant by a "craft" union and an "industrial" union. For example, the steelworkers union is an industrial union in composition, while the electrical workers are a craft union in national composition. One of the problems in the railroads is the fact that there are over 20 individual craft unions and the railroads must bargain individually with each. The same problem exists in airlines and in the

maritime and shipping industries. We are concerned that many a large school board may have to bargain with one organization representing teachers, a second representing educational secretaries, a third representing custodians, a fourth for maintenance workers, a fifth for bus drivers, a sixth for food service employees, and so on. There ought to be more thinking about this at the school district level. If unions are to be accepted, perhaps unionization ought to take the form of an industrial union to represent all non-teaching school employees. In many cases, however, educational secretaries are considered to be professional employees and are cool to the idea of being represented by an organization such as the American Federation of State, County and Municipal Employees.

A concluding point is the fact that industries in America, with the exception of the maritime industry, do not have two powerful employee groups vying at each case of the coal for exclusive recognition. In almost every major city school system in the United States, one finds the American Federation of Teachers, AFL-CIO, fresh from its victories in New York, Philadelphia, and other large cities attempting to overcome the NEA. On the other hand, the NEA affiliates are not only competing with the AFT in the big cities but are gaining uncontested victories by the score in suburban and rural areas, where the AFT brand of unionism has not yet emerged. In large cities when the two groups compete, a school superintendent is at a loss as how to deal with the subject of exclusive recognition when he himself may be a member of the NEA. Some superintendents feel the idea of keeping a minority NEA affiliate alive and active so as to have a loyal opposition. The idea doesn't work. In the cases where one of the other organizations has been defeated entirely there is real fear that the defeated organization may not survive.

Conclusions

As competition for representation in school districts becomes more intense between the American Federation of Teachers and the National Education Association, it is appropriate to look at the assets and liabilities of each. The NEA has strong assets in its capacity to gather national statistics that can be made available to local bargaining groups; to provide educational materials through its many professional divisions and departments, which may be used to back up negotiation demands and

requests. The NEA is also the wealthier organization and can provide more money at the local level. The NEA also has statewide organizations, which can put pressure on legislatures in lobbying for professional negotiation procedures as well as make certain that the legislatures are more generous in their subsidies to local school districts in order to meet the demands of NEA bargainers.

On the other hand, the American Federation of Teachers, with its burst of energy which resulted in the organization of the cities of New York, Philadelphia, Chicago, Detroit, Washington, and Baltimore, will be heard from soon in many other large cities. The AFT has received a great deal of guidance and help from the national AFL-CIO organization, and some of the tactics provided by the so-called professionals were helpful in leading to new breakthroughs. With this assistance, the subject matter negotiated has been much more comprehensive and the "pros" have not hesitated to resort on management's turf in areas such as control of class size.

Furthermore, the American Federation of Teachers, in having the support of organized labor, focuses attention of all workingmen who belong to unions throughout the United States on the problem of the schoolteacher. Middle-class support in large cities is also important in obtaining public approval when teacher organizations are looking for more money and increases in taxes. AFT's alliance with labor puts it in a better position to tie in with some type of local council or federation representing nonteaching employees.

In effect, both the NEA and AFT provide assistance to teachers in moving toward their desired objectives.

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